

Recreational Trails Program

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

SECTION 4860. The “Recreational Trails Program” proposed regulation is intended to implement, interpret, and make specific Public Resources Code Section 5072.8 and to establish eligibility, application, grant selection and grant administration requirements for the Recreational Trails Program (RTP).

The Department has developed the Procedural Guide for the federal Recreational Trails Program Final June 4, 2007. The proposed regulation will incorporate this procedural guide by reference.

In the Procedural Guide for the federal Recreational Trails Program Final June 4, 2007, under land tenure requirements for Development Projects, Applicants must certify to the Department that they have adequate tenure to, and site control of, properties to be improved. For property not owned in fee title, the Department requires the Applicant enter into an agreement for at least 20 years for Grants greater than \$100,000 and for at least 10 years for Grants up to and including \$100,000. However, in response to comment from the public, the Department has made a change to the procedural guide. The Department has revised the Alternate Land Tenure Process to allow applicants to submit alternate land tenure arrangements to meet these requirements on development projects where the property is not owned in fee title, and the applicant does not have an agreement for land tenure of 10 or 20 years. The revised process requires a letter from the landlord explaining the landlord’s prohibition of long term land tenure agreements, description of long standing use of the property by the Applicant and a commitment letter by both the landlord and Applicant to renew the lease in incremental periods to satisfy the 10 or 20 year land tenure requirement.

A commenter stated that the land tenure requirement would make many critical planned trail connections within their City ineligible for RTP grants. An important element of the City’s future trail system is trail easements through land owned by Southern California Edison which typically limits leases for trail easements on their land to only five years. Many essential connections that serve both the City and the region would be ineligible under the current version of the procedural guide. The Department agrees with the concern by the commenter. The Department has determined that land tenure requirements must provide for site control, tenure assurance, stewardship and public recreation operation commensurate with the grant funds. At the same time the Department understands the need for flexibility and consideration of local situations. Therefore, the Department has revised the procedural guide and will consider alternate arrangements to allow for less than 10 -20 year land tenure agreements when certain conditions are met.

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SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JUNE 15, 2007 THROUGH JULY 31, 2007.

1. Pamela Chana, City of Irvine, Manager of Community Services

“We have one concern with the Land Tenure Requirements. On Page 12 of the Procedural Guide, it states that: *‘All Grants greater than \$100,000 require at least 20 years of land tenure and public recreation operation. All grants up to and including \$100,000 require at least 10 years of land tenure and public recreation operation.’*”

The land tenure requirement would make many critical planned trail connections within the City ineligible for RTP grants. The City of Irvine General Plan establishes a goal of a comprehensive trail network to provide connections to other city and regional trail systems. Objective B-4(i) of the General Plan stipulates that the City should “provide off street bicycle trails in areas with minimal cross traffic, such as open space spine, flood control, and utility easements, where possible (emphasis added).” Therefore an important element of the City’s future trail system is trail easements through land owned by Southern California Edison. However, SCE typically limits leases for trail easements on their land to only five years. Many essential connections that serve both the City and the region would thus be ineligible under the current version of the guidelines. In light of this limitation, we request that the land tenure requirement for grants be revised to 5 years minimum. Irvine has an outstanding trail system that provides a valuable recreational amenity and alternative circulation system to the residents of Irvine and Orange County. We hope that the grant program will contain sufficient flexibility to allow us to further develop this exceptional public resource.”

Response:

The Department of Parks and Recreation, Office of Grants and Local Services has a responsibility to ensure that grant projects provide a public benefit. Federal guidance allows States to set their own policies and laws to further define the Recreational Trails Program. The Department has determined that land tenure requirements must provide for site control, tenure assurance, stewardship and public recreation operation commensurate with the grant funds. At the same time the Department understands the need for flexibility and consideration of local situations. Therefore, the Department’s policy allows for less than 10 -20 year land tenure agreements when certain conditions are met.

The Department provides technical assistance on an ongoing basis for our grant programs and is willing to offer technical assist to any eligible applicant with their comprehensive trail network goals. The Recreational Trails Program Procedural Guide, page 12, specifies “all grants greater than \$100,000 require at least 20 years of land tenure and public recreation operation. All grants up to and including \$100,000 require at least 10 years of land tenure and public recreation operation.”

The Procedural Guide, page 11, specifies land tenure requirements are applicable for development/rehabilitation projects. The Department expects applicants applying for development projects to provide land tenure with reasonable public access and an

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assurance that the project benefits are relative to the value of the grant. Applicants may request a review of their Land Tenure agreements in advance of submitting an application or may apply for a grant and the Department will review their land tenure agreement as part of the application review process.

The Department agrees to change the Land Tenure Requirements, specifically adding to the Alternate Process in the proposed regulation Procedural Guide for the federal Recreational Trails Program, Final June 4, 2007 (page 11, 12):

“Alternate land tenure arrangements will be considered when the following conditions A **and** B are met:

- A. The landlord provides a letter which;
 - a. Explains the landlord’s policy prohibiting long term land tenure agreements,
 - b. Describes the long standing use of the property by the Applicant, and,
 - c. States a clear commitment to continue to renew the lease with the applicant absent any unforeseen circumstances.
- B. The eligible applicant provides a letter from its authorized representative which;
 - a. Agrees to renew the lease with the landlord in incremental periods to satisfy the 10 to 20 year land tenure requirement.”

The Department expects the Grantee to fully comply with the Use of Facilities terms of the contract. If the landlord does not renew a lease, and the grantee cannot comply with the time period stated in the contract, the Department may hold the grantee in breach of contract.

2. Maria Baird, Fairfax Volunteers, the Town of Fairfax, and Friends of Volunteers for Fairfax

“There exist in many California Cities and Towns a network of pedestrian oriented trails, useful for recreation and directly adjacent to people's homes. Unfortunately, many of these trails are neglected, for reasons ranging from the lack of dedicated funding and the desire of municipal governments to lessen their liability, to basic unawareness of the populace on where these trails are located. Often lacking visible demarcation, these trails currently may resemble a deer trail as much as the legal pedestrian right of ways that they are.

Frequently, these trails are located in hilly areas, where roads do not have adequate sidewalks and are quite circuitous. In these cases, the trails often provide the most direct route to a destination as well. Because of this, the trails are extremely useful in day-to-day activities, and when used as such provide recreation and exercise at the same time. In addition, the routes also may connect to open space adjacent to densely populated areas. These trails and pathways may contain scenic views and vistas, hiking opportunities, and other natural resources such as lakes and creeks. The observation of wildlife possible in open space provides a teaching opportunity for school groups. Indeed, because these

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trails lead down the hill towards schools and downtowns as well as towards open space, the trails also can dovetail with the Safe Routes to School programs, providing safer off road routes for children to take to school.

Advantages of these trails for the community at large are also present and synergistic, because neighbors tend to meet each other while walking, thus building friendships and building community, while enhancing neighborhood safety. Add to this the accessibility of trails extending almost literally from people's doorways, without the use of fossil fuels to get to them, and you have a very attractive situation.

A secondary benefit of these trails is that they can provide egress from hilly areas in the event of an urban wildfire, as was seen in the Oakland Hills fire of 1991. Many lives were saved as a result of the use of these primarily recreational trails in that emergency. Because promotion of these trails by government as primarily for emergency use opens up many legal and economic pitfalls for municipalities, this approach effectively forms a barrier to their improvement. Promotion of their use for recreational purposes, something much more useful on a day-to-day level, does not create these barriers. As with any recreational nature trail, liability falls on the user, not the owner of the land.

Therefore, it is strongly recommended that the California Department of Parks and Recreation dedicate funds to the promotion and usage of these urban trails through grants to small towns and cities that do not have dedicated funding sources for their maintenance and upkeep, and to non-profit groups that are oriented to working towards these goals.”

Response:

Federal law (Federal Highway Administration Section 206) and State law (Public Resources Code Section 5072.8) defines the types of projects and applicants eligible to apply for RTP funds and not the Department. The Department is following law for the types of projects and applicants eligible for the grant funds. Neither federal or State law makes a distinction between urban and non urban trails, thus both are equally eligible to compete for the funds. State law prohibits the use of funds for maintenance of non motorized trails; however, State law does enable funds to be used for maintenance of motorized trails.

Information on eligible applicants may be found on page 11 and Information on eligible projects may be found on page 13 of the Procedural guide. The Department will in evaluating the competing Grant Applications, strive for objectivity and uniformity in evaluating proposals. In addition, page 25 notes the Department will make an effort to provide equitable geographic spread of Funds provided that sufficient well qualified proposals exist.

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TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department went through a noticed public review and comment process for the Procedural Guide for the federal Recreational Trails Program Final Draft June 4, 2007. In addition during the development of the June 1, 2006 RTP procedural guide, the Department went through an extensive and noticed public review and comment process. This process included six stake holder meetings (focus groups) held statewide, a 30 day public comment period, a public hearing, and a 15 day follow up public comment period. The June 1, 2006 and January 25, 2007 RTP procedural guide provide the basis for the development of the Procedural Guide for the federal Recreational Trails Program Final Draft June 4, 2007 that is the subject of this regulation. The Department held a public hearing on July 31, 2007 regarding the proposed regulation, posted the notice of proposed rule making and all required documents on the Department's website. In response to comments, the Department revised the procedural guide and provided an additional 15 day comment period including posting on the Department's website.

COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC.

The modified text was made available to the public from October 24, 2007 through November 13, 2007. The Department did not receive any comments on the modified text.

ALTERNATIVES DETERMINATION

The Procedural Guide for the federal Recreational Trails Program Final June 4, 2007 is incorporated by reference as the most practical course for the proposed regulation. Regulations must be established in order to implement PRC Section 5072.8. The Procedural Guide for the federal Recreational Trails Program Final June 4, 2007 consists of 82 pages and is incorporated by reference because it would be too burdensome to publish in the California Code of Regulations. The Department has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.